IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No.352 of 2007

Santosh Singh,
S/o Shri Makkhan Singh,
R/o Bakkhapur,
P.S. and Tehsil – Kichchha,
District – Udham Singh Nagar ..... Appellant

Versus

State of Uttaranchal -------- Opposite Party

Sri R.S. Bisht, learned counsel for the appellant.
Sri Harish Pujari, learned AGA for the State.

Dated: 20.09.2007

Hon'ble Dharam Veer, J.

This criminal appeal has been preferred under Section 449 of the Criminal Procedure Code, 1973 against the orders dated 11.10.2002 and 21.03.2003 passed by Additional Sessions Judge/3rd Fast Tract Court, Nainital.

2 In brief, the case of the prosecution is that the present appellant was surety of accused Prakash Singh and when Prakash Singh was not present in the court concerned then the notices were issued to the sureties and the notice was served on the present appellant. After service, when the appellant could not appear in the court concerned and he could not give answer to the show cause notice then his surety bond was forfeited and recovery warrant was issued against him on 11.10.2002 by the trial court. Against the order dated 11.10.2002 the present appellant moved application for recalling the order. After perusing of the records, the learned Additional Sessions Judge/3rd Fast Track Court, Nainital has passed an order on 21.03.2003 that the previous order is final and no

amendment can be done by the trial court and only appeal is maintainable against the said order and he has further mentioned in the order that the surety bond filed by the present appellant was not accepted by the trial court and the order 11.10.2002 was wrongly passed for forfeiture of bond of the appellant.

3. I have heard Sri R.S. Bisht, learned counsel for the appellant and Sri Harish Pujari, learned AGA for the State.

4. I have perused the record of the trial court. From the perusal of the lower court record, it comes out that surety bond of Santosh Singh is on the record that is paper no.50 Kha/12, which shows that the surety bond was filed by Santosh Singh on 06.07.1995 but that was not accepted by the trial court. There is stamp of the trial court on the surety bond but signed of the judge concerned is not there, which shows that the surety bond was not accepted by the trial court. On the basis of this, as the surety bond has not been accepted by the trial court then as per the law, the amount of the surety bond cannot be recovered from the appellant.

5. In view of the facts and circumstances narrated above, the appeal is allowed and the orders dated 11.10.2002 and 21.03.2003 passed by Additional Sessions Judge/3rd Fast Tract Court, Nainital are hereby set aside.

(Dharam Veer, J.)

September 20, 2007
RBS